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Attorneys for Plaintiff LEHMAN  
BROTHERS HOLDINGS, INC.

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

LEHMAN BROTHERS HOLDINGS, INC.,  
Plaintiff,

vs.

MOUNTAIN VIEW MORTGAGE  
COMPANY dba MVM FUNDING  
GROUP,  
Defendant and Third Party Plaintiff,

STEVEN WORTH, an individual; JESUS  
A. MOLINA, an individual; JOHN  
ALCOTT, an individual; NEVADA LAND  
INVESTMENTS, LLC, a Nevada limited  
liability company; TREVOR MESNIK, an  
individual; GUY CHRISTIANO, an  
individual; AND DOES 1 through 20,  
inclusive,  
Third Party Defendants.

CASE NO. 2:09-cv-00710-PMP-PAL

**PLAINTIFF'S MOTION TO DISMISS  
WITHOUT PREJUDICE**

1 Plaintiff Lehman Brothers Holdings, Inc. ("LBHI"), pursuant to Fed. R. Civ. P. 41(a)(2)  
 2 and LR 7-2, moves this Court to dismiss this case without prejudice due to defendant Mountain  
 3 View Mortgage Company d/b/a MVM Funding Group's ("Mountain View") ongoing bankruptcy  
 4 case.

5 LBHI's motion is based on the pleadings and other papers filed with this motion and is  
 6 supported by the following Memorandum of Points and Authorities.

## 7 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 8 **A. Procedural History**

9 LBHI filed its complaint against defendant Mountain View on April 21, 2009, asserting  
 10 claims for breach of contract and breach of express warranty following the purchase of certain  
 11 mortgage loans. (Doc. 1.) On August 3, 2009, Mountain View filed a third-party complaint  
 12 against Steven Worth, Jesus A. Molina, John Alcott, Nevada Land Investments, LLC, Trevor  
 13 Mesnik and Guy Christiano. (Doc. 23.) On June 18, 2010, defendant Mountain View filed a  
 14 chapter 7 petition for bankruptcy in the United States Bankruptcy Court, District of Nevada, Case  
 15 No. 10-21356-mkn. (Doc. 66, 70.) Counsel for Mountain View moved to withdraw as counsel on  
 16 October 18, 2010, which motion was granted on October 28, 2010. (Doc. 75, 77.) Defendant  
 17 Mountain View has never retained new counsel and remains unrepresented in this case. On May  
 18 31, 2011, this Court dismissed third-party defendant Steven Worth without prejudice. (Doc. 79.)

19 This case was stayed per Mountain View's bankruptcy. (Doc. 77.) Every 120 days,  
 20 beginning on May 31, 2011, counsel for LBHI has appeared before this Court at a status  
 21 conference to update the Court on the status of Mountain View's bankruptcy case. (Doc. 79-82.)  
 22 Another status conference is scheduled for September 10, 2012. (Doc. 82.)

### 23 **B. Current Status of Bankruptcy Case**

24 Mountain View's bankruptcy case remains ongoing. There has been no further activity  
 25 since the last status conference held on May 14, 2012. Mountain View has been neither granted  
 26 nor denied discharge, and no assets have been distributed to creditors. (*See* Case No. 10-21356-  
 27 mkn.) Rather than tying up this Court's docket indefinitely while the bankruptcy case continues,  
 28 plaintiff LBHI moves to dismiss this case without prejudice.

1 LBHI requests that the status conference set for Monday, September 10, 2012 at 9:00 a.m.  
2 be immediately vacated as moot.

3 DATED this 6<sup>th</sup> day of September, 2012.

4 LEWIS AND ROCA LLP

5 By /s/ Emily G. Clark

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13 and

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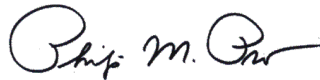
17 511 Sixteenth Street, Suite 700

18 Denver, Colorado 80202

19 *Attorneys for Plaintiff*

20 IT IS SO ORDERED.

21 Dated: September 7, 2012.

22 

23 PHILIP M. PRO

24 UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of September, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing on the following CM/ECF registrants:

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/s/ Eloisa Nunez  
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